

Message

From: Deegan, Dave [Deegan.Dave@epa.gov]
Sent: 12/8/2020 9:56:49 PM
To: R1 Executives All [R1ExecutivesALL@epa.gov]
Subject: FW: Daily News Clips 12/08/20

From: Sullivan, Melissa
Sent: Tuesday, December 8, 2020 4:56:46 PM (UTC-05:00) Eastern Time (US & Canada)
To: AO OPA OMR CLIPS
Subject: Daily News Clips 12/08/20

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FIFRA policy change listed under the new dicamba registration will affect all pesticides registered under FIFRA. Cases made against glyphosate, Enlist Duo, and Chlorpyrifos have varying outcomes in 2020.
Alaina Dismukes | Dec 08, 2020

Several legal issues that affect agriculture have been brought to court in 2020. During the new regulations made for the 2021-2025 dicamba label, a new Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) policy change could affect not only dicamba but all pesticides that are registered under FIFRA. Cases made against glyphosate, Enlist Duo, and Chlorpyrifos have also raised concerns for users of these products.

During a National Agricultural Law Center webinar, Brigit Rollins and Harrison Pittman discussed the top ten legal issues affecting agriculture over this year. Rollins, staff attorney at the National Agricultural Law Center, addressed the FIFRA policy change and pesticide lawsuits and regulations in 2020.

FIFRA policy change

A footnote made in the new registration decision for dicamba included a significant FIFRA policy change.

"The change is significant because it not only affects dicamba-based pesticides, but it would affect all pesticides that get registered under FIFRA," Rollins said. "In this memo accompanying the dicamba registration, there was a footnote that alters EPA's policy on FIFRA section 24(c) permits. These are also known as special local needs permits."

FIFRA section 24(c) allows states to alter use requirements for federally registered pesticides, but to do so, they need to apply to EPA for a local needs permit.

"This permit allows states to add a 'use requirement' just for that state," she said. "Say a pesticide is registered for use on certain crops, and the state wants to expand the crops that the pesticide can be used on. They can apply for a FIFRA section 24(c) permit."

"Typically, these 24(c) permits are used to broaden pesticide use. However, in the past few years, there's been a trend of states using those permits to implement application cutoff dates for dicamba as well. In the past, there was not a national cutoff date included in those labels. Instead, states applied for FIFRA 24(c) permits if they wanted to impose a cutoff date."

However, according to Rollins, EPA will no longer allow states to use these 24(c) permits to restrict use beyond what's given in the federal label. This applies not only to dicamba but to all pesticides registered under FIFRA.

"Where does this leave our states? According to EPA, they can still regulate use under FIFRA section 24(a), which says states may regulate the use of pesticides so long as they do not violate FIFRA to do so," Rollins said. "However, it's uncertain what the boundaries of section 24(a) are, especially if states wanted to impose a cutoff date. Right now, it is unclear what the effect of this policy change will be."

Glyphosate cases

Lawsuits surrounding Roundup have been going on over the last few years. Currently, Bayer is still in negotiations to try to settle the multiple Roundup-related lawsuits that have been brought to court.

"The federal court concluded in 2020 that glyphosate will not be required to bear Proposition 65 labels, which is a California statute that requires certain products to bear a label warning the consumer that the product may cause cancer," Rollins said.

The state of California tried to list glyphosate under Proposition 65, which would have included Roundup Ready products.

"There have been debates that maybe agricultural products sprayed with glyphosate might need to bear Proposition 65 labels," she said. "The Federal District Court did conclude that requiring those Proposition 65 labels for glyphosate products would be a First Amendment violation."

In January of 2020, the EPA issued an interim registration decision for glyphosate re-approving it for use and reaffirming that EPA does not hold the view that glyphosate causes cancer.

"There are two petitions for review of the decision the EPA issued, which are filed in the Ninth Circuit Court, so that is still ongoing too," she said.

Enlist Duo and Chlorpyrifos

Even though the Ninth Circuit vacated the registration for dicamba, it upheld the registration for Enlist Duo.

"In this case on Enlist Duo, the case was challenging the 2016 registration under both FIFRA and the ESA," Rollins said. "There was a lot of overlap in the claims brought for Enlist Duo and dicamba, so it is interesting to see the court rule differently in these two cases."

The court rejected all the FIFRA claims raised, except for the claim that EPA failed to properly assess harm to the Monarch butterfly, which is up for consideration to be listed under the Endangered Species Act.

"The decision on whether the Monarch butterfly is an endangered species is up to the Fish and Wildlife Service who are to make their decision before the end of this year," she said. "However, the court concluded that EPA failed to fully consider under FIFRA whether registering Enlist Duo would have an adverse impact on Monarch butterflies. The court sent the decision back to EPA for further assessment on the impact to Monarchs but kept the registration in place meaning that Enlist Duo will remain registered for use while EPA completes this assessment."

Recently, two cases have been filed in California against Corteva, alleging that exposure to Chlorpyrifos, manufactured by Corteva, has harmed the plaintiff's children. The claims include negligence, failure to warn, and design defects.

"The claims here are similar to some of the claims that were raised in the Bader Farms dicamba case," Rollins said. "In these cases, however, they also brought claims against the city where the plaintiff resides, alleging that the city had failed to provide 'wholesome, potable' drinking water. They are saying that Chlorpyrifos made its way into the city's water supply, which was another way their children were exposed. This too is an ongoing case, which we will most likely be hearing more about in 2021."

Pollution

Stricter controls on soot pollution rejected by EPA

<https://www.arkansasonline.com/news/2020/dec/08/stricter-controls-on-soot-pollution-rejected-by/>

WASHINGTON -- The Trump administration Monday rejected setting tougher standards on soot, the nation's most widespread deadly air pollutant, saying the existing regulations remain sufficient even though some public health experts and environmental justice organizations had pleaded for stricter limits.

The agency retained the current thresholds for fine particle pollution for another five years, despite mounting evidence linking air pollution to lethal outcomes from respiratory illnesses, including covid-19, the disease caused by the coronavirus. Documents obtained by The Washington Post show the Environmental Protection Agency has disregarded concerns, raised by other administration officials, that several of its air policy rollbacks would disproportionately affect minority and low-income communities.

In its decision announced Monday, the EPA maintained that the Obama-era levels, set in 2012, adequately protect human health. Agency scientists had recommended lowering the annual particulate matter standard to between 8 and 10 micrograms per cubic meter in a draft report last year, citing estimates that reducing the limit to 9 could save between 9,050 and 34,600 lives a year.

The current national standards limit annual concentrations of soot and other chemicals to 12 micrograms per cubic meter of air. Emissions on specific days are allowed to be as high as 35 per cubic meter, a standard set 14 years ago.

These fine particles -- which measure less than 2.5 micrometers in diameter, or a 30th the width of a human hair -- can enter the lungs and bloodstream, causing inflammation that can lead to asthma, heart attacks and other illnesses.

During a call with reporters Monday, EPA Administrator Andrew Wheeler said the agency's decision "comes after careful review of the most rigorous scientific evidence," as well as consultation with the agency's outside scientific advisers, consideration of tens of thousands of official comments and input from five public meetings.

"I got multiple recommendations," he said, referring to the standards. "Every scientist can take a look at this and reach a different conclusion."

Wheeler also said that particulate matter pollution has fallen during the Trump administration and that the nation's levels remain five times below the global average and are lower than levels in France, Germany and the United Kingdom.

"The U.S. now has some of the lowest fine particulate matter in the world," he said.

An EPA advisory committee was made up of outside experts split on the question, with some members calling for tighter standards and others arguing the current rules remain sufficient. Ultimately, Wheeler decided this spring to maintain the existing standards for fine particulate matter.

"The United States has some of the cleanest air in the world, and we're going to keep it that way," Wheeler told reporters at the time. "We believe the current standard is protective of public health."

Several major business groups, including the U.S. Chamber of Commerce and the American Petroleum Institute, backed the administration's decision to retain the existing standards, noting that annual concentrations of fine particulate matter are down by 39% since 2000.

The chamber commended the agency's decision Monday, calling it "a testament to successful collaboration between EPA, states and industry to develop and adopt new emissions control technologies and practices in a sound, cost-effective manner."

Monday's decision marks the Trump administration's latest move in a long-running effort to ease industrial regulation. The White House has rolled back more than 125 environmental safeguards during Trump's time in office, according to a Post analysis, with plans to finish nearly a dozen more by mid-January.

Water

WaterWorld

"EPA issues draft guidance clarifying wastewater permit requirements under Maui decision"

<https://www.waterworld.com/environmental/press-release/14188635/epa-issues-draft-guidance-clarifying-wastewater-permit-requirements-under-maui-decision>

WASHINGTON -- The U.S. Environmental Protection Agency (EPA) has announced draft guidance that clarifies how the Supreme Court's County of Maui v. Hawaii Wildlife Fund decision should be applied under the Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit program. This guidance will help clarify when a NPDES permit is necessary under the Clean Water Act.

"EPA's guidance will address several questions that the regulated community and others have raised since the Supreme Court issued its decision earlier this year," said EPA Assistant Administrator for Water David Ross. "NPDES permits are essential tools that help protect our nation's water resources. Understanding when such permits are needed is critical to the efficient administration of our Clean Water Act permitting programs." In its decision, the Supreme Court held that a NPDES permit is required for a discharge of pollutants from a point source that reaches "waters of the United States" after traveling through groundwater if that discharge is the "functional equivalent of a direct discharge from the point source into navigable waters."

The Maui decision also outlines seven non-exclusive factors that the regulated community and permitting authorities should consider when evaluating such a discharge from a point source, depending on the circumstances.

EPA's draft guidance places the 'functional equivalent' analysis into context within the agency's NPDES permit program. The draft reiterates the threshold conditions for triggering the requirement for a NPDES permit—an actual discharge of pollutants from a point source to a water of the United States. The guidance also proposes that the design and performance of the system or facility from which the pollutant is released is an additional factor that should be considered. When finalized, this action will provide guidance to assist the regulated community and permit authorities with incorporating the Supreme Court's direction in Maui into existing Clean Water Act NPDES permit programs and authorized state programs.

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